

# TREASURER OF STATE[781]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 12D.2, the Treasurer of State hereby amends Chapter 16, “Iowa Educational Savings Plan Trust,” Iowa Administrative Code.

Chapter 16 is amended to comply with federal law changes. The Treasurer of State also used this opportunity to review additional rules and subrules in this chapter to provide revisions, updates, and clarifications to existing Iowa educational savings plan trust rules administered by the Treasurer of State.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2791C** on October 26, 2016. A public hearing was held on November 15, 2016, at 10 a.m. in the State Capitol, Room 116, 1007 E. Grand Avenue, Des Moines, Iowa. Interested persons also had the opportunity to make written comments on the proposed amendments on or before November 15, 2016. No public comments were received. One change to the amendments was made since publication of the Notice. In subrule 16.11(4), the words “Iowa 529 plan” were stricken and the word “trust” was added.

The general waiver provisions of the Treasurer of State in 781—Chapter 19 apply to these amendments.

The Treasurer of State adopted these amendments on November 30, 2016.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 12D.

These amendments will become effective January 25, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 781—16.2(12D) as follows:

**781—16.2(12D) Definitions.** In addition to the terms defined in Iowa Code section 12D.1, the following terms apply to this chapter:

*“Academic period”* means one semester or one quarter or such other equivalent period as may be defined by the qualified institution of higher education.

*“Account”* means an account established and maintained under the Iowa educational savings plan trust for a beneficiary.

*“Account balance”* means the fair market value of an account.

*“College savings Iowa”* means the name and logo registered under Iowa law to represent the direct-sold Iowa 529 plan under the Iowa educational savings plan trust.

*“Contribution”* means an amount contributed to an account in accordance with the Internal Revenue Code, these rules and the application program description.

*“Eligible educational institution”* means any college, university, vocational school, or other postsecondary educational institution eligible to participate in a student aid program administered by the U.S. Department of Education.

*“Half-time”* means at least half-time if he or she is enrolled for at least half the full-time academic workload for the course of study the student is pursuing, as determined under the standards of the school where the student is enrolled.

~~*“Iowa 529 plan”* means college savings Iowa, the Iowa advisor 529 plan, and any other college savings plan established by the program administrator, collectively, under the Iowa educational savings plan trust.~~

*“Iowa advisor 529 plan”* means the name and logo registered to represent the advisor-sold Iowa 529 plan under the Iowa educational savings plan trust.

*“Participant”* means an individual, individual’s legal representative, trust, estate, or an organization described in Section 501(c)(3) of the Internal Revenue Code and exempt from taxation under Section 501(a) of the Internal Revenue Code that opens an account in a plan and that owns and controls the assets held in the account.

“Participation agreement” means the form that the participant submits to the program administrator to identify the participant, beneficiary, plan, and other information that may be requested by the program administrator.

“Payments” means the money paid by the participant to the trust under the participation agreement.

“Plan” means either (1) college savings Iowa, (2) Iowa advisor 529 plan, or (3) any other college savings plan established by the program administrator under the Iowa educational savings plan trust.

“Program administrator” means the treasurer of state.

“Program description” means the description of each plan provided to participants setting forth information with respect to the plan.

“Qualified higher education costs ~~expenses~~” means tuition, fees, and the cost of books, supplies and equipment required for the enrollment or attendance of the beneficiary at a qualified institution of higher education the same as “qualified higher education expenses” as defined in Section 529(e)(3) of the Internal Revenue Code. Room and board shall be treated as qualified higher education costs for a beneficiary, subject to maximum annual dollar amounts determined by the program administrator, if room and board are incurred during an academic period in which the beneficiary is enrolled or accepted for enrollment in a degree, certificate or other program that leads to a recognized educational credential (such as a bachelor’s degree or an associate’s degree) awarded by a qualified institution of higher education. The beneficiary must be enrolled at least half time for board expenses to be qualified.

“Qualified institution of higher education” means an institution described in Section 481 of the federal Higher Education Act of 1965 that is eligible to participate in the United States Department of Education’s student aid programs. State universities in Iowa and other states qualify, as do community colleges and private accredited four-year and two-year colleges. Some vocational and technical schools qualify as well.

“Successor participant” means a successor to the ownership of an account designated as such in accordance with rule 781—16.9(12D) and the applicable program description.

ITEM 2. Amend rule 781—16.3(12D) as follows:

**781—16.3(12D) Participation agreement and program description.** The following material shall be used to administer the Iowa educational savings plan trust.

**16.3(1)** ~~“Participation agreement” means the form that the participant submits to the program administrator to identify the participant, beneficiary, plan, and other information that may be requested by the program administrator.~~ The participation agreement shall be signed and dated by the participant to verify that the participant agrees to the terms and conditions of the program. For online applications, participants must confirm that they have read the terms and conditions prior to submitting the application.

**16.3(2)** Each plan will have a program description setting forth the terms of the plan and describing the investments, and procedures and fees applicable to that plan. Each program description shall also set forth the privacy policy adopted by the program administrator for that plan. Persons interested in a plan should consult the plan description. A plan description may be changed at any time by the program administrator, and any such change may impact the rights of participants and beneficiaries under the plan.

ITEM 3. Amend subrules 16.4(1) and 16.4(2) as follows:

**16.4(1)** Appropriate forms must be completed ~~in~~ on paper, online or via telephone (whichever is applicable for the requested actions) to perform the actions listed below. Current forms are available online at [www.collegesavingsiowa.com](http://www.collegesavingsiowa.com) for college savings Iowa and at [www.iowaadvisor529.com](http://www.iowaadvisor529.com) for the Iowa advisor 529 plan. Actions which require the completion of an appropriate form include the following:

- ~~a. Terminate a participation agreement.~~
- ~~b. Transfer ownership rights of an Iowa 529 plan account to another person pursuant to Iowa Code section 12D.6(5).~~
- ~~c. Request the substitution of a beneficiary.~~

- ~~d. Exchange investments.~~
- ~~e. Establish, delete or change automatic investments.~~
- ~~f. Establish, delete or change banking information.~~
- ~~g. Request a qualified withdrawal.~~
- ~~h. Request an allocation update.~~
- ~~i. Request for payroll deduction.~~
- ~~j. Establish, delete or change electronic bank transfer information.~~
- ~~k. Establish, delete or change interested party information.~~
- ~~l. Establish, delete or change successor information.~~
- ~~m. Change E-mail address on file.~~
- ~~n. Change address on file.~~
- ~~o. Request a rollover to another 529 plan.~~
- ~~p. Establish, delete or change power of attorney on an account.~~
- ~~q. Change beneficiary information on an account.~~
- a. Open or close an account.
- b. Transfer ownership rights of an account to another person.
- c. Change a beneficiary.
- d. Exchange existing investments.
- e. Change the direction of future contributions.
- f. Establish, delete or change automatic investments.
- g. Make an additional purchase by check.
- h. Request a full or partial withdrawal.
- i. Add, change or delete payroll deduction.
- j. Establish or make an electronic bank transfer.
- k. Establish, delete or change interested party information.
- l. Establish, delete or change a successor participant.
- m. Change the participant's e-mail or mailing address or telephone number.
- n. Request a rollover to another 529 plan.
- o. Transfer funds from a qualified U.S. savings bond.
- p. Roll over assets directly or indirectly from another 529 plan.
- q. Establish, delete or change the power of attorney on an account.
- r. Authorize limited power of attorney for the account.
- s. Authorize or change a financial advisor who can obtain information regarding the account.
- t. Identify the current trustee of a trust.
- u. Identify officers of an organization.
- v. Update beneficiary information on the account.

**16.4(2)** The program administrator may from time to time provide additional forms for use by participants and beneficiaries in connection with actions involving ~~the Iowa 529~~ a plan and will make those forms available online and in paper format and may authorize substitute forms for a plan or a process in lieu of existing forms, except when not permitted by Iowa Code chapter 12D.

ITEM 4. Amend rule 781—16.5(12D) as follows:

**781—16.5(12D) Participant eligibility Responsibilities.** ~~Iowa Code section 12D.3 provides that the trust may enter into participation agreements with participants to effectuate the purposes, objectives and provisions of the trust. This rule establishes the eligibility criteria for a participant.~~

**16.5(1) Participant responsibilities.** Individual participants must meet the following requirements:

**16.5(1) a.** A participant must be at least 18 years old and a ~~resident of the~~ United States citizen or resident alien with a valid social security number or tax identification number.

**16.5(2) b.** A participant shall execute a participation agreement with the program administrator that specifies the plan selected by the participant and the terms and conditions under which the participant shall participate in the trust.

~~16.5(3)~~ c. A participant shall, on signing a participation agreement, provide the program administrator with the participant's social security number or tax identification number.

d. Participants which are trusts must submit evidence that the individual trustee is so authorized and agrees to the terms of the participation agreement and must provide the information requested by the program administrator. Participants which are described in Section 501(c)(3) of the Internal Revenue Code must provide their tax identification number and any other information requested by the program administrator.

**16.5(2) Program administrator responsibilities.**

a. The program administrator reserves the right to:

(1) Freeze an account or suspend account services or do both when a plan has received reasonable notice of a dispute regarding the assets in an account, including notice of a dispute in account ownership or when the plan reasonably believes a fraudulent transaction may occur or has occurred;

(2) Freeze an account or suspend account services or do both upon the notification to the plan of the death of a participant until the plan receives required documentation in good order and reasonably believes that it is lawful to transfer the account ownership to the successor participant;

(3) Redeem an account, without the participant's permission, in cases of threatening conduct or suspicious, fraudulent, or illegal activity; and

(4) Reject a contribution for any reason, including contributions that the plan believes are not in the best interests of the plan, a portfolio, or the participants.

b. The risk of market loss, tax implications, penalties, and any other expenses, as a result of such an account freeze, account redemption, or contribution rejection, will be solely the participant's responsibility.

ITEM 5. Amend rule 781—16.7(12D) as follows:

**781—16.7(12D) Payments and payment schedules Contributions.** Contributions are deductible under Iowa income tax laws in accordance with regulations of the department of revenue. ~~Iowa Code section 12D.3(1) states that participation~~ Participation agreements may require participants to agree to invest a specific amount of money in ~~the trust~~ a plan for a specific period of time for the benefit of a specific beneficiary. This rule provides for implementation of this provision.

**16.7(1)** The program administrator will provide each participant a ~~quarterly~~ fourth quarter statement. In addition, the program administrator will provide each participant that had an account with either contributions or withdrawals in the first, second, or third quarter with a quarterly statement for that account. Participants are allowed to make contributions at any time during the calendar year provided that each contribution is made in accordance with the minimum contribution and other requirements set forth in the program description.

**16.7(2)** The program administrator shall actuarially determine an account balance limit applicable to the total of all accounts in the plans for the benefit of each beneficiary. No additional ~~payments~~ contributions may be made on behalf of a beneficiary if the total of the account balances of all accounts held for the beneficiary exceed the applicable account balance limit.

**16.7(3)** Beginning in 2000 and each year thereafter, the program administrator shall determine the maximum amount that a participant may contribute and deduct from Iowa income taxes pursuant to Iowa Code chapter 422 on behalf of a beneficiary for the calendar year by applying the applicable inflation adjustment. The adjusted annual maximum shall be communicated to participants in ~~Iowa 529~~ the plans and to the public in any reasonable manner determined by the program administrator.

ITEM 6. Amend rule 781—16.9(12D) as follows:

**781—16.9(12D) Change of participant or account owner.** The participant is the initial owner of the account established under ~~an Iowa 529~~ a plan and, as such, has the exclusive right to cancel the participation agreement or change the designated beneficiary in accordance with these rules and the applicable program description.

**16.9(1)** A participant may transfer the participant's current ownership rights in an account to another eligible individual, an individual's legal representative, a trust, an estate, or an organization described in Section 501(c)(3) of the Internal Revenue Code and exempt from taxation under Section 501(a) of the Internal Revenue Code or to a ~~minor~~ beneficiary. To do so, the participant shall complete the appropriate form.

**16.9(2)** A participant may also designate on the participation agreement a successor, ~~who shall succeed to the ownership of the account in the event of the death of the participant.~~ A participant may change the designated successor by completing the appropriate form. The designated successor shall succeed to the ownership of the account in the event of the death of the participant. Upon the death of the participant, the successor participant must notify the plan by submitting a completed participant agreement form and a certified copy of the death certificate. The change in ownership of the account will become effective for the successor participant once this paperwork has been received and processed.

**16.9(3)** In the event a participant or other account owner dies and has not designated a successor to the account, the following criteria will be used.

a. The designated beneficiary, if 18 years of age or older ~~at the time of the participant's death,~~ shall become the owner of the ~~Iowa 529 plan~~ account as well as ~~remaining~~ remain the beneficiary upon filing the appropriate forms.

b. If the designated beneficiary is under the age of 18, account ownership will be transferred to ~~the beneficiary's~~ a surviving parent or other legal guardian of the beneficiary upon the filing of the appropriate forms.

**16.9(4)** The participant may name a successor to the account even though the successor may already have established or may have plans to establish ~~an Iowa 529~~ a plan account.

ITEM 7. Amend rule 781—16.10(12D) as follows:

**781—16.10(12D) ~~Payment of benefits and qualified distributions~~ Qualified withdrawals.** This rule establishes the procedures for the payment of ~~benefits~~ qualified withdrawals.

**16.10(1)** The participant must initiate ~~distributions~~ a withdrawal for qualified or nonqualified expenses. The participant must file the appropriate form with the program administrator.

**16.10(2)** ~~Benefits~~ Qualified withdrawals will be paid in one of three ways once the request has been received by the program administrator:

- a. Directly to the institution of higher education for qualified expenses only.
- b. Directly to the participant for qualified ~~or nonqualified~~ expenses.
- c. Directly to the beneficiary for qualified expenses ~~only.~~

**16.10(3)** ~~Each distribution of benefits~~ qualified withdrawal will be comprised partly of contributions and partly of earnings, based upon the same proportion that contributions and earnings comprise the participant's account at the time of the ~~distribution~~ withdrawal.

**16.10(4)** Funds that are distributed to a participant pursuant to this rule shall be reported to the IRS on a 1099Q in the tax year in which such ~~distribution~~ withdrawal is made. The participant will receive the 1099Q for any ~~distributions~~ withdrawal made to the participant. The beneficiary will receive the 1099Q for any ~~distributions~~ withdrawal made to the beneficiary or institution of higher education. The individual receiving the 1099Q must determine whether the ~~distribution~~ withdrawal was qualified or nonqualified. ~~Nonqualified distributions may be subject to state and federal taxes and penalties.~~

**16.10(5)** A participant may transfer any remaining balance in one account to an existing or new account for another designated beneficiary by completing a new participation agreement with the program administrator.

ITEM 8. Amend rule 781—16.11(12D) as follows:

**781—16.11(12D) ~~Withdrawals~~ Nonqualified withdrawals and cancellation.** Iowa Code section 12D.5 provides that any participant may cancel a participation agreement at will. This rule establishes the criteria for nonqualified withdrawals from or the cancellation of a participation agreement.

**16.11(1)** A nonqualified withdrawal is one in which the funds are used for a purpose other than the payment of or reimbursement for qualified educational expenses. A participant may at any time ~~withdraw~~ make a nonqualified withdrawal of a portion of the amount in an account or cancel a participation agreement, without cause, by submitting to the program administrator the appropriate form. A nonqualified withdrawal will be paid only to the participant.

**16.11(2)** If the participation agreement is canceled, the participant is entitled to the amount in the account, subject to any applicable fees and expenses. The balance shall be mailed or otherwise sent to the participant after receipt by the program administrator of the appropriate form.

**16.11(3)** Funds that are distributed to a participant in a nonqualified withdrawal pursuant to this rule shall be reported to the IRS on a 1099Q in the tax year in which such ~~distribution~~ withdrawal is made. The participant will receive the 1099Q for any ~~distributions made to the participant~~ nonqualified withdrawals. ~~The beneficiary will receive the 1099Q for any distributions made to the beneficiary or institution of higher education. The individual receiving the 1099Q must determine whether the distribution was qualified or nonqualified.~~ Nonqualified distributions withdrawals may be subject to state and federal taxes and penalties.

**16.11(4)** Pursuant to Iowa Code section 642.2, funds held by the program administrator under the ~~Iowa 529 plan~~ trust are not subject to garnishment.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/21/16.